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11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
14

15 PETER VELASCO, *et al.*

16 Plaintiffs,

17 v.

18 CHRYSLER GROUP LLC,

19 Defendant.

Case No. 2:13-cv-08080-DDP (VBKx)

20 **MEMORANDUM IN SUPPORT OF**
21 **MOTION TO UNSEAL**

22 Date: December 1, 2014

23 Time: 10:00 a.m.

24 Judge: Honorable Dean D. Pregerson

25 Courtroom: 3
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INTRODUCTION

The public's right of access to court records is firmly protected by the common law and the First Amendment. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). This right is particularly important here, where the plaintiffs allege that a major car company concealed a dangerous safety defect that could affect millions of drivers. (*See* Second Am. Compl. [Docket No. 39] ¶ 1.) *Cf. Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983) (holding that "[t]he public has a strong interest in obtaining the information contained in the court record," where the "litigation potentially involves the health of citizens"); *In re Air Crash at Lexington, Ky.*, No. CIV A 506-CV-316-KSF, 2009 WL 1683629, at *8 (E.D. Ky. June 16, 2009) ("[T]he public interest in a plane crash that resulted in the deaths of forty-nine people is quite strong, as is the public interest in air safety.").

The plaintiffs have moved for a preliminary injunction requesting this Court order Chrysler to warn its customers about the defect. (*See* Notice Mot. Prelim. Inj. [Docket No. 49], at 1.) But many of the documents relating to that motion have been sealed. (*See* Docket Nos. 48, 53-57, 61-66, 73-74.) Even the requested warning itself has been redacted. (*See* Notice Mot. Prelim. Inj. 1.) The Center for Auto Safety ("the Center") has moved to intervene for the limited purpose of

1 seeking access to these documents.¹ As explained in the motion to intervene, the
2 Center has a strong interest in these records: It plans to use them to support its
3 petition to the National Highway Traffic Safety Administration to investigate the
4 alleged defect and to educate the public about any safety concerns.
5

6 The plaintiffs do not oppose the Center's motion to unseal. They only
7 moved to seal the documents in the first place because the parties had stipulated to
8 a protective order under which a party filing discovery information marked
9 confidential was required to move to seal that information. (*See* Stip. Prot. Order
10 [Docket No. 35] ¶5; Am. Application To Seal Evidence [Docket No. 51] at 2.) The
11 plaintiffs therefore, despite believing their motion (and accompanying documents)
12 ought to be public, moved to seal the portions that included or referred to
13 information they had received in discovery that Chrysler marked confidential. (*See*
14 Am. Application To Seal Evidence 2.) There is no indication in Chrysler's notice
15 of manual filing of its opposition and the exhibits thereto of why those documents
16 ought not be public. (*See* Notice Manual Filing [Docket No. 60], at 1.) This Court
17 has not yet made any findings as to whether there is a compelling reason for
18 sealing the records related to the motion for preliminary injunction. Therefore,
19 unless Chrysler can articulate – and provide the required factual support for – a
20 compelling reason to seal the documents, they should be unsealed immediately.
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¹ The Center has filed a separate Motion to Intervene and Brief in Support of the Motion.

ANALYSIS

Both the common law and the First Amendment strongly protect the public's right to access court records. *See Nixon*, 435 U.S. at 597; *Courthouse News Serv. v. Planet*, 750 F.3d 776, 787-78 (9th Cir. 2014); *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Court documents are presumptively public. *See United States v. Bus. of Custer Battlefield Museum & Store*, 658 F.3d 1188, 1194-95 (9th Cir. 2011); *Kamakana*, 447 F.3d at 1178; *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). They may be sealed only where a party articulates a "compelling reason" for doing so. *Kamakana*, 447 F.3d at 1178. Here, Chrysler has not articulated (nor has this Court found) *any* reason for sealing the documents related to plaintiffs' preliminary injunction motion. Unless it does so, under the common law right of access as well as the First Amendment, the records must be unsealed.

I. BECAUSE THIS COURT HAS NOT HELD THAT THERE ARE COMPELLING REASONS TO SEAL THE DOCUMENTS ASSOCIATED WITH PLAINTIFFS' PRELIMINARY INJUNCTION MOTION, THE RECORDS SHOULD BE UNSEALED PURSUANT TO THE PUBLIC'S COMMON LAW RIGHT OF ACCESS.

A. The Documents Submitted in Conjunction with a Preliminary Injunction Motion May Only Be Sealed if the Proponent of Sealing Demonstrates Compelling Reasons That Outweigh the Public's Right of Access.

Both the Supreme Court and the Ninth Circuit have affirmed the common law right of the public “to inspect and copy public records and documents, including judicial records and documents.” *Nixon*, 435 U.S. at 597 & n. 7; *Kamakana*, 447 F.3d at 1178. Unless a document is one that is “traditionally kept secret” – such as a grand jury transcript or a pre-indictment warrant – there is “a strong presumption in favor of access” to court records. *Kamakana*, 447 F.3d at 1178 (internal quotation marks omitted). This presumption can be overcome only if the party seeking to seal the record “‘articulate[s] compelling reasons supported by specific factual findings’ that outweigh the general history of access and the public policies favoring disclosure.”² *Id.* (quoting *Foltz v.*, 331 F.3d at 1135).

Like documents filed with the court, documents produced in discovery (but not filed) are also, “in the absence of a court order to the contrary, presumptively public.” *San Jose Mercury News, Inc. v. U.S. District Court-Northern District*

² Redactions of court records are subject to the same scrutiny as records sealed in their entirety. See *Kamakana*, 447 F.3d at 1183-84.

1 (*San Jose*), 187 F.3d 1096, 1103 (9th Cir. 1999). They may be sealed if (and only
2 if) the proponent of sealing makes a “particularized showing” that there is “good
3 cause” to do so – that is, that sealing is necessary to “protect a party or person from
4 annoyance, embarrassment, oppression, or undue burden or expense.” *Kamakana*,
5 447 F. 3d at 1180 (internal quotation marks omitted). This “good cause” standard
6 is lower than the “compelling reasons” standard that applies to most court records.
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8 *See id.*

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11 Where, as here, documents produced in discovery become part of the court
12 record because they were filed in conjunction with a motion, the standard applied
13 to whether those documents may be sealed depends on whether the motion to
14 which they are attached is dispositive. If the motion is not dispositive – such as,
15 for example, a motion for discovery sanctions, *see Phillips v. General Motors*
16 *Corp.*, 307 F.3d 1206, 1213 (9th Cir.2002) – the documents will likely be
17 “unrelated, or only tangentially related, to the underlying cause of action.”
18 *Kamakana*, 447 F. 3d at 1179 (internal quotation marks omitted). Where,
19 however, discovery documents are filed in conjunction with a dispositive motion,
20 they may only be sealed if there are “compelling reasons” to do so. *Id.* The Ninth
21 Circuit has explained that the “strong presumption of access to judicial records
22 applies fully to dispositive pleadings, including . . . related attachments” because
23 “the resolution of a dispute on the merits . . . is at the heart of the interest in
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1 ensuring the public’s understanding of the judicial process and of significant public
2 events.” *Id.* (internal quotation marks omitted).

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4 The plaintiffs’ motion for preliminary injunction in this case should be
5 treated as a dispositive motion for purposes of the public’s right of access because
6 it is “directly relevant to the merits of the case,” *id.* at 1180. This makes sense: To
7 determine whether a preliminary injunction should be granted, a court must
8 evaluate the moving party’s “likelihood of success on the merits.” *Ranchers*
9 *Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of Agric.*,
10 415 F.3d 1078, 1092 (9th Cir. 2005). The adjudication of motions for preliminary
11 injunction thus “involve[s] significant discussion of the merits of the case and
12 provide[s] the public an insight into how the court evaluates the merits of the
13 action.” *Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09–cv–01491–
14 JCM–GWF, 2011 WL 1630338 at *5 (D. Nev. April 29, 2011); *accord Melaleuca*
15 *Inc. v. Bartholomew*, No. 4:12-CV-00216-BLW, 2012 WL 5931690, at *2 (D.
16 Idaho Nov. 27, 2012). This is particularly true here, where the motion for
17 preliminary injunction and the merits of the case address precisely the same issue:
18 the alleged failure of the Totally Integrated Power Module (“TIPM”). (*Compare,*
19 *e.g.*, Pls. Mem. Supp. Prelim. Inj. [Docket No. 49] at 1, *with* Second Am. Compl. ¶
20 1.) Adjudication of the preliminary injunction motion is thus far from
21 “tangential[] . . . to the underlying cause of action”; it is precisely the kind of
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1 determination of the merits – albeit preliminary – the Ninth Circuit has held is
2 subject to a strong presumption of access. *See Kamakana*, 447 F. 3d at 1179
3 (internal quotation marks omitted). Therefore, the compelling reasons standard
4 must apply.
5

6 Most district courts to have considered this issue have reached the same
7 conclusion. *See, e.g., Melaleuca*, 2012 WL 5931690, at *2 (collecting cases);
8 *F.T.C. v. AMG Servs., Inc.*, No. 2:12-CV-536-GMN-VCF, 2012 WL 3562027, at
9 *2 (D. Nev. Aug. 15, 2012); *Selling Source*, 2011 WL 1630338 at *5. *But see In*
10 *re Nat’l Sec. Agency Telecomm. Records Litig.*, No. MDL 06-1791 (VRW), 2007
11 WL 549854 at *3 (N.D. Cal. Feb. 20, 2007). In *Melaleuca*, for example, the
12 District of Idaho held that although a “motion for preliminary injunction is not the
13 quintessential dispositive motion,” it should be treated as dispositive for purposes
14 of access to court records because it requires “significant discussion of the merits
15 of the case.” *Melaleuca Inc.*, 2012 WL 5931690, at *2 (internal quotation marks
16 omitted). Similarly, the District of Nevada has held that preliminary injunction
17 motions should be treated as dispositive in this context for the same reason. *See*
18 *Selling Source, LLC*, 2011 WL 1630338 at *5; *F.T.C. v. AMG Servs., Inc.*, 2012
19 WL 3562027, at *2; *see also Dish Network L.L.C. v. Sonicview USA, Inc.*, No. 09-
20 CV-1553 L (NLS), 2009 WL 2224596, at *6 (S.D. Cal. July 23, 2009) (holding
21 that a motion for temporary restraining order that “directly addresses the merits of
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1 the action and seeks injunctive relief before trial” should be treated as dispositive
2 for purposes of the public right of access to court records); *Yountville Investors,*
3 *LLC v. Bank of Am., N.A.*, No. C08-425RSM, 2009 WL 411089, at *1 (W.D.
4 Wash. Feb. 17, 2009) (explaining that a “motion for a preliminary injunction is
5 treated as a dispositive motion under” the rules governing the sealing of
6 documents).

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9 The compelling reasons standard thus applies to all the court records that
10 have been sealed in this case. The parties’ briefs on the motion for preliminary
11 injunction are clearly court records to which the strong presumption of public
12 access applies. And the discovery documents filed in support of those briefs are
13 subject to the same presumption because the preliminary injunction motion should
14 be treated as dispositive for purposes of the public’s right of access. To maintain
15 the documents under seal, then, Chrysler “must articulate compelling reasons” for
16 sealing, “supported by specific factual findings.” *Kamakana*, 447 F.3d at 1178.
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18 As explained below, it has failed to do so.

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22 **B. Chrysler Has Not Met Its Burden of Articulating Compelling**
23 **Reasons to Justify Sealing the Records in This Case.**

24 There is no indication that Chrysler has demonstrated – or that this Court has
25 found – “compelling reasons supported by specific factual findings,” *id.*, for
26 sealing the documents related to the motion for a preliminary injunction. The
27 minute order granting the defendant permission to file its opposition papers under
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1 seal does not explain the basis for this decision. (*See* Minute Order [Docket No.
2 62].) And the orders granting the plaintiffs permission to file under seal stated
3 only that “good cause appear[ed]” for doing so. (*See* Order Granting Pls.’ Am.
4 Application To Seal [Docket No. 52], at 1; Order Granting Application To Seal
5 [Docket No. 72], at 1.)
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8 But good cause is insufficient to maintain documents related to a preliminary
9 injunction motion under seal. The court records may only remain sealed for
10 compelling reasons. And, as explained above, “[a] ‘good cause’ showing will not,
11 without more, satisfy a ‘compelling reasons’ test.” *Kamakana*, 447 F.3d at 1180
12 (internal quotation marks omitted); *see Foltz*, 331 F.3d at 1135-36 .
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15 Furthermore, even if the good cause standard were applicable here, the
16 proponent of sealing still must make a “particularized showing” that the standard is
17 met. *Foltz*, 331 F.3d at 1138. That is, it is not enough to state that there is good
18 cause; a “party opposing disclosure has the burden of *proving* good cause, which
19 requires a showing that specific prejudice or harm will result” if a document is not
20 sealed. *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417,
21 424 (9th Cir. 2011) (emphasis added and internal quotation marks omitted). There
22 is no evidence that Chrysler has made such a showing. And the plaintiffs have
23 expressly stated that, in their view, the court records should be made public. (*See*
24 Am. Application To Seal Evidence 1.)
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1 The stipulated protective order does not change this analysis. “The right of
2 access to court documents belongs to the public; the parties may not “bargain [it]
3 away.” *San Jose Mercury News*, 187 F.3d at 1101. Because the protective order
4 was stipulated, it appears the magistrate judge did not determine whether there was
5 good cause or compelling reason to enter the order, let alone make particularized
6 findings that the specific documents filed with the court related to the preliminary
7 injunction motion were properly designated confidential. If Chrysler wishes the
8 documents to remain sealed, it must therefore establish – with respect to *each*
9 document or redaction – that sealing is proper. *See In re Roman Catholic*
10 *Archbishop of Portland in Oregon*, 661 F.3d at 424; *Biovail Labs., Inc. v. Anchen*
11 *Pharm., Inc.*, 463 F. Supp. 2d 1073, 1079-80 (C.D. Cal. 2006). Because Chrysler
12 has not articulated, and the Court has not found, any compelling reason for keeping
13 the documents at issue here secret, there is nothing to rebut the strong presumption
14 of public access to court records, and the documents must be unsealed. *See Pintos*
15 *v. Pacific Creditors Association*, 605 F.3d 665, 679 (9th Cir. 2010) (reversing
16 district court’s order sealing discovery material attached to dispositive motions
17 where the court neglected to determine whether compelling reasons exist to seal
18 the documents at issue); *EEOC v. Erection Co., Inc.*, 900 F.2d 168, 169 (9th Cir.
19 1990) (reversing an order sealing documents because the district court had failed to
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1 articulate “any reasoning or findings underlying its decision” to seal the court
2 documents).

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4 **II. THE PRELIMINARY INJUNCTION DOCUMENTS SHOULD BE**
5 **UNSEALED PURSUANT TO THE FIRST AMENDMENT RIGHT**
6 **OF ACCESS TO COURT RECORDS.**

7 In addition to the common law right of access, the First Amendment protects
8 the public’s right of access to the court records in this case. The Ninth Circuit
9 recently joined several other courts of appeals in holding that the First Amendment
10 right of access to court records applies to civil as well as criminal proceedings. *See*
11 *Courthouse News Serv. v. Planet*, 750 F.3d 776, 787-78 (9th Cir. 2014) (citing
12 cases from other circuits); *Wood v. Ryan*, 759 F.3d 1076, 1081-82 (9th Cir. 2014)
13 *vacated on other grounds*, 2014 WL 3600362 (U.S. July 22, 2014) (“[W]e recently
14 acknowledged the First Amendment right of access to civil proceedings and
15 associated records and documents.” (internal quotation marks omitted)).
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20 The First Amendment standard is even more demanding than that under the
21 common law right of access: A party seeking to seal documents must demonstrate
22 not only a “compelling interest” in sealing, but also a “high probability” that this
23 interest would be harmed if the documents were disclosed and that “there are no
24 alternatives to closure that would adequately protect the compelling interest.”
25 *Perry v. Brown*, 667 F.3d 1078, 1088 (9th Cir. 2012) (internal quotation marks
26 omitted). As explained above, no party has identified a “compelling interest” in
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1 sealing the filings associated with the plaintiffs’ motion for preliminary injunction,
2 let alone demonstrated how this interest would be harmed by public access to the
3 documents or that there are no alternatives to sealing. The filings should therefore
4 be unsealed.
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7 **III. THE DOCUMENTS SHOULD BE UNSEALED WITHOUT**
8 **DELAY.**

9 Several courts have “emphasize[d]” that “where a right of access is found,”
10 access should be granted “immediate[ly].” *Lugosch v. Pyramid Co. of Onondaga*,
11 435 F.3d 110, 126 (2d Cir. 2006) (citing cases). Because court records are public
12 by default, the sealed filings should be unsealed as soon as this Court determines
13 that there is no valid basis for keeping them secret. The Court “need not document
14 compelling reasons to *unseal*; rather the proponent of sealing bears the burden [to
15 demonstrate that sealing is proper]. A failure to meet that burden means that the
16 default posture of public access prevails.” *Kamakana*, 447 F.3d at 1181-82
17 (emphasis added).
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21 The Ninth Circuit has explained that delay in permitting access to court
22 records impairs not only the right of access itself, but also the right of free speech.
23 *See Courthouse News Serv.*, 750 F.3d at 788. In *Courthouse News Service*, a news
24 organization challenged a state court’s refusal to give the organization same-day
25 access to newly filed civil complaints under the common law right of access and
26 the First Amendment. *See id.* at 789. The district court abstained and dismissed
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1 the lawsuit because of pending state court litigation about a state law that also
2 provided a right of access to court records. *See id.* The Ninth Circuit held that
3 abstention was improper because it would delay adjudication of the organization's
4 right to access court records. *See id.* at 793. The court explained that this delay
5 could "harm[] [the organization's] free speech interests" by "prevent[ing] it from
6 engaging in protected activity" – in that case, reporting on new lawsuits. *Id.* at
7 788. So too, in this case, delay could harm the Center's ability to engage in
8 protected activity: The Center only has until December 19, 2014 to supplement its
9 petition requesting that the National Highway Traffic Safety Administration
10 investigate the alleged TIPM safety defect. Any delay in unsealing the records at
11 issue may impede the Center's ability to petition the Administration to take action.
12 *See California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)
13 ("[T]he right to petition extends to all departments of the Government."). In
14 addition, it will hinder the Center's efforts to timely inform the public about the
15 defect and the "ongoing judicial proceedings" surrounding it. *Courthouse News*
16 *Serv.*, 750 F.3d at 788.

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18 Therefore, unless the parties can demonstrate compelling reasons to keep the
19 documents filed in conjunction with the plaintiffs' preliminary injunction motion
20 sealed, they should be unsealed immediately.
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CONCLUSION

This Court should unseal the documents filed in conjunction with the plaintiffs' motion for preliminary injunction.

DATE: October 23, 2014

Respectfully submitted,

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